

HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the HA or the owner under the HAP contract.

§ 982.457 Owner refusal to lease.

(a) Section 8(t) of the 1937 Act (42 U.S.C. 1437f(t)) provides that an owner who has entered into a HAP contract under Section 8 of the 1937 Act on behalf of any tenant in a multifamily housing project shall not refuse:

(1) To lease any available dwelling unit in any multifamily housing project of the owner that rents for an amount not greater than the fair market rent for a comparable unit to a holder of a rental certificate under Section 8 and to enter into a HAP contract respecting the unit, if a proximate cause of the refusal is the status of the prospective tenant as a holder of a certificate; or

(2) To lease any available dwelling unit in any multifamily housing project of the owner to a voucher holder and to enter into a HAP contract respecting the unit, a proximate cause of which is the status of such prospective tenant as a holder of such voucher.

(b) For the purposes of Section 8(t), the term *multifamily housing project* means a residential building containing more than four dwelling units.

Subpart K—Rent and Housing Assistance Payment

SOURCE: 63 FR 23861, Apr. 30, 1998, unless otherwise noted.

§ 982.501 Overview.

(a) There are three types of tenancy in the Section 8 tenant-based programs:

(1) A regular tenancy under the certificate program;

(2) An over-FMR tenancy under the certificate program; and

(3) A tenancy under the voucher program.

(b) Some requirements of this subpart are the same for all three types of tenancy. Some requirements only apply to a specific type of tenancy. Unless specifically stated, requirements of this subpart are the same for all tenancies in the tenant-based programs.

§ 982.502 Negotiating rent to owner.

The owner and the family negotiate the rent to owner. At the family's request, the HA must help the family negotiate the rent to owner.

§ 982.503 Rent to owner: Reasonable rent.

(a) *HA determination.* (1) The HA may not approve a lease until the HA determines that the initial rent to owner is a reasonable rent.

(2) The HA must redetermine the reasonable rent:

(i) Before any increase in the rent to owner;

(ii) If there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary; or

(iii) If directed by HUD.

(3) The HA may also redetermine the reasonable rent at any other time.

(4) At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the HA.

(b) *Comparability.* The HA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the HA must consider:

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) *Owner certification of rents charged for other units.* By accepting each monthly housing assistance payment from the HA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the HA information requested by the HA on rents charged by the owner for other units in the premises or elsewhere.

§ 982.504 Maximum subsidy: FMR/exception rent limit.

(a) *Purpose.* (1) Fair market rents (FMRs) are published by HUD. In the

tenant-based programs, the FMR/exception rent limit is used to determine the maximum subsidy for a family.

(2) For a regular tenancy under the certificate program, the FMR/exception rent limit is the maximum initial gross rent under the assisted lease.

(3) For the voucher program, the FMR/exception rent limit is the maximum "payment standard" (maximum subsidy) for a family.

(4) For an over-FMR tenancy under the certificate program, the FMR/exception rent limit is the "payment standard" (maximum subsidy) for a family.

(b) *Determining exception rent*—(1) *Area exception rent: HUD approval.* (i) At HUD's sole discretion, HUD may approve an area exception rent for all units, or all units of a given size (number of bedrooms), leased by program families in a part of the fair market rent area that is designated as an "exception rent area." A HUD-approved area exception rent applies to all HAs with jurisdiction of the exception rent area.

(ii) An area exception rent may not exceed 120 percent of the FMR.

(iii) HUD will determine the area exception rent by either of the two following methods:

(A) *Median rent method.* In the median rent method, HUD determines the area exception rent by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception rent area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception rent area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census data products.

(B) *40th percentile rent method.* In this method, HUD determines that the area exception rent equals the 40th percentile of rents to lease standard quality rental housing in the exception rent area. HUD determines the 40th percentile rent in accordance with the methodology described in 24 CFR 888.113 for determining fair market rents. An HA that asks HUD to approve

an area exception rent determined by the 40th percentile rent method must present statistically representative rental housing survey data that justify exception rent approval by HUD.

(iv) An area exception rent will not be approved unless HUD determines that an exception rent is needed either:

(A) To help families find housing outside areas of high poverty; or

(B) Because certificate or voucher holders have trouble finding housing for lease under the program within the term of the certificate or voucher.

(v) The total populations of exception rent areas in an FMR area may not include more than 50 percent of the population of the fair market rent area.

(vi) At any time, HUD may withdraw or modify any approved area exception rent.

(2) *Regular certificate tenancy: Exception rent as reasonable accommodation for person with disabilities: HA approval.* For a regular tenancy in the certificate program, on request from a family that includes a person with disabilities, the HA must approve an exception rent of up to 120 percent of the fair market rent if the exception rent is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

§ 982.505 Voucher tenancy or over-FMR tenancy: How to calculate housing assistance payment.

(a) *Use of payment standard.* For a voucher tenancy or for an over-FMR tenancy under the certificate program, a "payment standard" is used to calculate the monthly housing assistance payment for a family. The "payment standard" is the maximum monthly subsidy payment for a family.

(b) *Voucher program: Amount of assistance*—(1) *Voucher payment standard: Maximum and minimum.* (i) The HA must adopt a payment standard schedule that establishes payment standards for the HA voucher program. For each FMR area and for each exception rent area, the HA must establish voucher payment standard amounts by unit size (zero-bedroom, one-bedroom, and so on).